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exempting such lands. Four justices dissent from this view and say that the Legislature must perform the trust "in accordance with the powers and under the restrictions imposed by the Constitution of the State."

EVIDENCE—RAILROADS—MASTER AND SERVANT—NEGLIGENCE.— HASIK V. ALABAMA & VICKSBURG RY. CO., 28 Sou. Rep. 941 (Miss.).—In an action by an injured person against a railroad company for injuries sustained, the defendant company offered evidence of the general careful habits of the engineer, prior to the accident. *Held*, admissible.

This decision is at variance with the weight of American authority and goes further than any previous decision in admitting evidence of this kind. The distinction is to be carefully drawn as to the purpose for which such evidence is offered. In case of injury to a co-employee it is admissible for the purpose of showing that the defendant exercised the required degree of care in the selection of its employees, or for the purpose of showing that the defendant was culpably negligent. In this case, however, no such state of facts was involved. *Robinson* v. *R. R. Co.*, 7 Gray 92; *City of Delphi* v. *Lowery*, 74 Ind. 525. *Contra, Elevator Co.* v. *Neal*, 65 Ind. 438; *Gahagan* v. *R. R. Co.*, 1 Allen 187; *Peterson* v. *Adamson*, 67 Iowa 739, 16 E. D. Smith's Rep. 271; *Dunham* v. *Rackliffe*, 71 Me. 345.

INSPECTION OF PARTY'S PERSON—POWER OF COURT.—STACK V. N. Y., N. H. & H. R. R. Co., 58 N. E. 686 (Mass.).—*Held*, the power of a Court to order a party in a personal injury case to submit to inspection of his person in order to enable examiner to qualify as a witness, did not exist.

This decision follows the doctrine established in *Railroad Co.* v. *Botsford*, 141 U. S. 250, which is also followed in New York and Maryland; *McQuigan* v. *Railroad Co.*, 129 N. Y. 50; *Penn. Co.* v. *Newmeyer*, 129 Md. 401. The contrary rule is established in many States. See "*The Power to Compel Physical Examination in Case of Injury to Person*," 1 Yale Law Journal 57, where cases to the contrary are collected.

INSURANCE—ARBITRATION—CONDITION PRECEDENT—RIGHT TO SUE.—WESTENHAVER, ET AL. V. GERMAN-AMERICAN INS. CO., 84 N. W. Rep. 717.—Plaintiffs held policy which made arbitration a condition precedent to right of action for loss. Arbitrators failed to agree upon an umpire and plaintiffs sued. *Held*, in the absence of bad faith on part of insurer plaintiffs must propose other arbitrators with view to agreement, and that they could not arbitrarily set aside the arbitration clause and sue.

It is a mooted question as to how far either must go in his efforts to secure appraisal where both are free from fraud. It has been said that no cause of action lies until some award is made by arbitration. *Canal Co.* v. *Penn. Coal Co.*, 50 N. Y. 267; *Herrick* v. *Belknap*, 27 Vt. 673. The true rule is that under such a contract the party wishing to sue must show that he has done all that he could have done to carry out the contract.

INTERNAL REVENUE ACT—UNSTAMPED INSTRUMENTS—EVIDENCE IN STATE COURTS.—SMALL ET AL. V. SLOCUMB ET AL., 37 S. E. 481 (Ga.).—*Held*, that the Internal Revenue Act of 1898, declaring unstamped instruments inadmissible in evidence, is limited to Federal Courts only, and not to preclude admission of such instruments in an action in a State Court.

The Courts recognize the power of Congress to levy and collect taxes by requiring revenue stamps to be placed upon certain written instruments, and